PROPOSED TENTATIVE

On August 31, 2022, plaintiff Elodia Chavez (hereafter, plaintiff) filed a complaint on standard Judicial Council forms against defendant George Burns (hereafter, defendant), for motor vehicle and general negligence. Plaintiff asks for punitive damages. The complaint seems bare bones, alleging that on July 2, 2022, on State Route 135 in Orcutt, defendant crashed his vehicle into a vehicle driven by plaintiff. Defendant was intoxicated at the time of the vehicle accident, and according to plaintiff, "acted with a willful and deliberate disregard for the safety and rights of others, including Plaintiff, causing traumatic amputation of her arm, and warranting a finding of punitive damages . . . ." Defendant has answered. The trial court ultimately denied defendant's request to enforce a settlement agreement, concluding in an order signed on July 15, 2023, that "the settlement had been cancelled by Defendant's voiding of the settlement check." The California Victim Compensation Board has filed a notice of an amended lien of $18,713.12, which has been awarded to plaintiff as a result of the accident and defendant's convictions.

Plaintiff has filed a summary judgment motion only, claiming that as to both causes of action (motor vehicle negligence and general negligence), as well as the request for punitive damages, she is entitled to summary judgment as a matter of law, under the issue preclusion doctrine. (See, e.g., *Hong Sang Market, Inc. v. Peng* (2018) 20 Cal.App.5th 474, 491, fn. 4 [**"**Issue preclusion, or collateral estoppel, does not apply unless the issue was actually litigated and necessarily decided in the former proceeding.**"**]; *Bridgeford v. Pacific Health Corp.* (2012) 202 Cal.App.4th 1034, 1042 ["An issue was 'actually litigated' for purposes of collateral estoppel only if it was properly raised, submitted for determination, and decided in the prior proceeding."; see generally *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.)[1] According to plaintiff, there is no need to litigate the issue of defendant's negligence liability because all elements of negligence have been conclusively established via defendant's October 17, 2023, criminal convictions, which are based on the same facts, defendant's same conduct, and same victim, namely defendant's guilty plea to a violation of Vehicle Code section 23153, subdivision (b) [driving under the influence with .08 percent or more, by weight, of alcohol in blood], with an admission of the truth of a personal great bodily injury enhancement per Penal Code section 12022.7 [involving plaintiff], as well as a guilty plea to Vehicle Code section 23540 [prior driving under the influence conviction within 10 years]. Plaintiff received a 3-year state prison, with execution suspended, and a 3-year probationary term. Plaintiff insists that the pleas and admission establish "each element" of negligence and establish punitive damages under the doctrine of issue preclusion (collateral estoppel).

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[1] Under issue preclusion, a prior judgment conclusively resolves an issue actually litigated and determined in the first action." (*Ibid.*) "[I]ssue preclusion applies (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." (*Id.* at p. 82; *People v. Jung* (2020) 59 Cal.App.5th 842, 859, disapproved of by *People v. Vivar* (2021) 11 Cal.5th 510 on other grounds).)

Defendant in opposition does not contest the potential preclusive effect of a guilty plea/admission under the issue preclusion doctrine, at least in theory, but argues that the court should look to the elements of issue preclusion to resolve the issue, applying each element separately, so not "to prevent her from relitigating the same issues between the parties." (Opp. at 5.) Defendant seems to argue initially that ***he*** is the beneficiary of issue preclusion, and that plaintiff's lawsuit should be concluded (and thus the court should enter judgment in defendant's favor). Defendant has not filed a summary judgment motion, so the court cannot enter judgment in favor of defendant. The court will, however, treat defendant's opposition as asking the court to deny plaintiff's motion, because in defendant's view plaintiff has not satisfied all elements of issue preclusion despite his guilty pleas and admission; in this regard, defendant insists (on an element-by-element approach attendant to issue preclusion), that the antecedent criminal and extant civil actions are not identical; the issues were not actually ligated and necessarily decided in the criminal matter; the parties between the two actions are not in privity; and public policy is not furthered by application of the issue preclusion doctrine. Defendant concludes by arguing that plaintiff cannot establish "a cause of action" for either motor vehicle negligence or general negligence, and cannot establish "punitive damages" based on the determinations in the criminal matter.

Plaintiff has filed a reply. Plaintiff asks the court to reject defendant's attempt to use issue preclusion as a sword to enter judgment in favor of defendant (as noted above, the court agrees that this request is inappropriate, for defendant has not filed a summary judgment motion); and asks the court in the end to grant summary judgment because all elements of issue preclusion have been satisfied, based on an element-by-element approach and contrary to defendant's contentions.

The court will address both parties' requests for judicial notice, and then address the merits of plaintiff's summary judgment motion.

A) Judicial Notice

Both parties ask the court to take judicial of certain documents.

Plaintiff as the moving party asks the court to take judicial notice of the following: 1) Santa Barbara County Superior Court Criminal Case Docket entries in *People v. George Joseph Burns*, Santa Barbara County Superior Court Case No. 22CR04720; 2) Certified criminal case documents, in Case No. 22CR04720, including the felony complaint, October 19, 2023 the criminal minute order, the October 19, 2023 plea form, the statement of plea form, a criminal minute order dated November 16, 2023, and a sentencing and probation order dated November 16, 2023; 3) the civil complaint in this case; 4) CACI 400 ; 5) CACI 425; 6) CACI 709; 7) CACI 3900; 8) CACI 3908; 9) CACI 3903C; 10) CACI 3903D; 11) 3905A; 12) CACI 3940; 13) CACI 3114; 14) Defendant's responses to Requests for Admission, Set Two; 15) Defendant's responses to Form Interrogatories, Set one; 16) the "Traffic Crash Report[,]" involving an

investigation of the accident and scene after the crash at issue, and authored by Officer Banuelos; and 17) "Pertinent [California] Statutes" (Pen. Code, § 12022.7 Veh. Code, §§ 23152, subd. (b) and 231531.

Defendant in opposition asks the court to take judicial notice of the following: 1) the "Traffic Crash Report[,]" involving an investigation of the accident and scene after the crash at issue, and authored by Officer Banuelos; 2) Santa Barbara County Superior Court Criminal Case Doctrine entries in *People v. George Joseph Burns*, Santa Barbara County Superior Court Case No. 22CR04720; 3) Certified criminal case documents, in Case No. 22CR04720, including the felony complaint, October 19, 2023 the criminal minute order, the October 19, 2023 plea form, the statement of plea form, a criminal minute order dated November 16, 2023, and a sentencing and probation order dated November 16, 2023; 4) plaintiff's operative civil complaint in this matter; and 5) defendant's response to plaintiff's form interrogatories, Set One, No. 12.6.

The court will grant each request as no opposition to either has been filed.

B) Merits

The court denies plaintiff's summary judgment motion, without the need to address and/or decide in this immediate context the applicability or scope of the issue preclusion doctrine, as requested and briefed by both parties. The court will assume, without deciding (for purposes of the present summary judgment motion only) that defendant's guilty pleas and admission have preclusive effect *as to defendant's liability*. Even with this assumption, however, the court cannot grant the motion, for the following reasons.

First, it is settled in California that the request made in the notice of motion dictates how the court must treat the motion (either as one for summary judgment or one for summary adjudication). Summary judgment or summary adjudication cannot be ordered on the court's own motion. (*Scheiding v. Dinwiddle Construction Co*. (1999) 69 Cal.App.4th 64, 75.) When the notice of motion seeks only summary judgment, the court must treat the motion as one for summary judgment only, not summary adjudication. (*Homestead Savings. Superior Court* (1986) 179 Cal.App.3d 494, 498.) Only summary judgment was requested in plaintiff's notice of motion. Plaintiff did not request summary adjudication, meaning that if there is a disputed issue of material fact as to any element of either cause of action, summary judgment must be denied.

Second, plaintiff has the initial burden with regard to her summary judgment motion to make a prima facie showing of the nonexistence of any triable issue of material fact as to ***all*** elements of ***all*** causes of action; if this burden is met, the burden of production shifts to the opposing party to make a prima facie showing of a triable issue of material fact. In ruling on the motion, the court must view the evidence in the light most favorable to the opposing party. (*Shin v. Ahn* (2007) 42 Cal.4th 482, 499.) Put more forcibly, plaintiff, as the moving party and as part of her prima facie burden of production and persuasion, must prove with undisputed evidence

each element of the cause of action. (Code Civ. Proc., § 437c, subd. (p) [a plaintiff meets its burden for summary judgment if that party has "proved each element of the cause of action entitling the party to judgment on the cause of action']; *Aguilar* v. *Atlantic Richfield Co.* (20021) 25 Cal.4th 826, 850, 853; *WRI Opportunity Loans II, LLC v. Cooper* (2007) 154 Cal.App.4th 525, 532 [all that the plaintiff need do is to 'prove[ ] each element of the cause of action].) Thus, a trial court can only grant summary judgment when no triable issue of material fact exists as to all elements of the causes of action.

Third, the critical elements for motor vehicle negligence and general negligence (the two causes of action advanced in the operative pleading) are essentially the same: duty, breach of duty, legal cause, and damages. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 480 [elements of a negligence claim are (1) duty of care, (2) breach, (3) causation, and (4) damages].) Plaintiff insists that under the rules of issue preclusion (collateral estoppel), defendant's guilty plea convictions for driving under the influence conviction, per Vehicle Code section 23153, subdivision (b); and for suffering a second driving under the influence conviction within 10 years of a prior conviction, per Vehicle Code section 23540; along with his admission of the truth of the personal great bodily injury enhancement per Penal Code section 12022.7, all associated with the accident alleged in the operative pleading, establishes all these elements.

Not so. Even if the court assumes arguendo that defendant's liability is established under the issue preclusion doctrine (a point the court does not need to resolve for current purposes), plaintiff has not presented undisputed prima facie evidence *of the amount of harm suffered (that is, the damages she suffered*), in financial terms, in order to forego trial and allow summary judgment. Damages are unquestionably part of any negligence cause of action. Plaintiff's separate statement is utterly silent on the issue – indeed, damages are not mentioned in any of the 10 issues of undisputed fact presented in defendant's separate statement. (*City of Pasadena v. Superior Court* (2014) 228 Cal.App.4th 1228, 1238, fn. 4 [with some exceptions not relevant here, if the material facts are not set forth in the separate statement, they do not exist].) And an examination of plaintiff's memorandum of points and authorities simply underscores the evidentiary deficiency. Plaintiff alleges on page 15 of her memorandum that she has "endured the amputation of the left arm," as a result of defendant's negligent misconduct, and has undergone surgery, physical therapy, rehabilitation, and other treatment to manage her medical condition. Plaintiff also claims that she has suffered emotional distress, grief, anxiety, shock, humiliation, and loss of income. Plaintiff then cites to CACI 3900. 3903A, 3903C, 3903D, and 3905A as support. All of this is likely true, but there are no facts presented to justify the damage components of each of these CACI instructions (including amounts), the substance of which was never determined or resolved by defendant's guilty plea in the criminal prosecution. Damages as of today's hearing remain undetermined, uncertain, and speculative. Plaintiff at no point asks for or indicates any amount associated with general or special damages, either in her memorandum or her separate statement. Tellingly, this uncertainty is reflected in plaintiff's proposed order, submitted with the summary judgment motion, in which plaintiff asks the court to make "express

factual findings," leaving the order open (i.e., with blank spaces). The only "factual finding" a court makes at summary judgment, if warranted, is whether or not there exists undisputed issues of material fact as to all elements of the causes of action (as this is plaintiff's motion). As ***no*** evidence has been presented as to general and/or special damages, disputed or otherwise, a trial on the topic is required, meaning summary judgment is inappropriate.

The rationale articulated in *Paramount Petroleum Corp v. Superior Court* (2014) 227 Cal.App.4th 226, seems particularly apt here. The appellate court was asked to address the following proposition: "May a plaintiff seek summary adjudication [and by obvious logic summary judgment] of liability only, leaving the resolution of damages to a later trial? The statutory language mandates the question be answered in the negative. A plaintiff can obtain summary adjudication of a cause of action only by proving 'each element of the cause of action entitling the party to judgment on that cause of action.' As damages are an element of a breach of contract cause of action (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 229 [], a plaintiff cannot obtain judgment on a breach of contract cause of action in an amount of damages to be determined later." (*Paramount Petroleum, supra*, at p. 241.)

While *Paramount Petroleum* involved a breach of contract, there is absolutely no reason to limit its reach to that context. Code of Civil Procedure section 437c makes no provisions for partial summary judgment as to liability generally, and this would include tort liability. Because any issues concerning the calculation of damages remain to be determined, as plaintiff seems to concede in her proposed order, summary judgment cannot be granted. (*Department of Industrial Relations v. UI Video Stores, Inc*. (1997) 55 Cal.App.4th 1084, 1097.) Lest there be any doubt about this proposition, a seminal treatise makes it crystal clear that a "summary judgment or adjudication" is *improper* where the amount of damages raises factual issues to be resolved by the trier of fact. (Weil & Brown, *Cal. Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2023 Supp.) ¶ 10:33.) That is the case here.

Finally, plaintiff's request for a freestanding grant of "summary judgment" as to her punitive damages claim is also unavailing. First, "summary adjudication" (not summary judgment) may be granted as to a claim for punitive damages even though it does not dispose of an entire cause of action (See Code Civ. Proc, ,§ 437c, subd. (f)(1); see *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 92 ["a claim for punitive damages is one of the substantive areas which is properly the subject of a motion for summary adjudication"]), and as noted above, plaintiff did not request summary adjudication in her notice of motion. The court has no authority to grant summary adjudication on its own authority. In any event, and not insignificantly, even if summary adjudication could in theory be secured, plaintiff has manifestly failed to present issues of undisputed fact, keeping in mind the clear and clear and convincing standard attendant for punitive damages as required under Civil Code section 3294. Again, even if the court assumes arguendo that the guilty plea convictions establish defendant's liability, which might include punitive damages, it remains uncertain as to what amounts should be imposed as punitive damages, if any, a critical circumstance precluding summary adjudication.

As was true with regard to compensatory damages (general or special damages), the separate statement is utterly silent about facts that would suggest an appropriate amount. A trial is required, meaning summary judgment cannot be granted.

For all of these reasons, the court denies plaintiff's summary judgment motion.

While the court has found it unnecessary to address the propriety and import of the issue preclusion doctrine as requested and briefed by the parties (as summary judgment is inappropriate even assuming arguendo the issue preclusion doctrine applies to establish defendant's liability in this civil context), the court feels it necessary to make additional comments in this regard. The court offers these comments in order to foster a meaningful discussion at the hearing, and to keep the parties focused on the salient points of law that will frame these issues in the future, all the while providing guidance on how the matter should proceed after today's ruling.

First, plaintiff clearly argued in its briefing that "California courts routinely hold that a criminal conviction precludes the convicted party from contesting liability in a subsequent civil case based on the same facts" (See Memorandum, p. 12), citing to *Bowen v. Ryan* (2008) 163 Cal.App.4th 916, *Mattson v. City of Costa Mesa* (1980) 106 Cal.App.3d 441, and, most notably, *Teitelbaum Furs, Inc. v. Dominion Ins. Co*. (1962) 58 Cal.2d 601, 604. Plaintiff goes so far as to summarize *Teitelbaum* as standing for the proposition that a "guilty verdict represents actual litigation and determination of all necessary facts for purposes of subsequent civil case." (Memorandum, p. 13.) Defendant for his part seems to concede a least in theory that a guilty plea may have preclusive effect in a subsequent civil action under the issue preclusion doctrine, but asks the court to apply a more Byzantine analysis to resolve the issue, looking and applying each element of that doctrine on an *ad hoc* basis.

Both parties have overlooked authority that actually frames and governs the outcome of this issue.[2] True, it is settled that issues decided in a prior criminal proceeding can serve as the basis to apply issue preclusion in a subsequent civil proceeding. (*Teitelbaum Furs, Inc., supra,* 58 Cal.2d at p. 604-605.) However, our high court has stated unmistakably (albeit in dictum) that collateral estoppel (issue preclusion) is inapplicable when the criminal conviction is ***resolved by guilty plea as opposed to a criminal trial.*** (*Id*. at pp. 605-606.) A close review of *Teitelbaum* reveals the following critical passage in this regard: "A plea of guilty is admissible in a subsequent civil action on the independent ground that it is an admission. It would not serve the policy underlying collateral estoppel, however, to make such a plea conclusive. . . . When a plea of guilty has been entered in the prior action, no issues have been 'drawn into controversy' by a 'full presentation' of the case. It may reflect only a compromise or a belief that paying a fine is

[2] It was for this reason that the court choose the path it did in resolving the merits of plaintiff's summary judgment motion. The court feels obliged to outline the relevant legal standards because the parties have failed to do so.

more advantageous than litigation. ***Considerations of fairness to civil litigants and regard for the expeditious administration of criminal justice [citation] combine to prohibit the application of collateral estoppel against a party who, having pleaded guilty to a criminal charge, seeks for the first time to litigate his cause in a civil action.***" (*Id*. at pp. 605-606, bold and italics added.) In order words, a conviction following a guilty plea is not conclusive for purposes of collateral estoppel (issue preclusion). This principle is *routinely cited and followed by modern courts.* (*Coscia v. McKenna & Cuneo* (2001) 25 Cal.4th 1194, 1204 [following *Teitelbaum*, and concluding that a conviction based upon a guilty plea is not conclusive in a subsequent civil action involving the same issues]; accord, *Isidora M. v. Silvino M.* (2015) 239 Cal.App.4th 11, 23, fn. 13 [a guilty plea, while admissible in subsequent civil action, does not have conclusive effect in a later civil proceeding]; *City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 767, fn. 4 [our Supreme Court in *Teitelbaum* has concluded that a guilty plea is only admissible in a civil case to the extent it is an admission; it does not serve as collateral estoppel [issue preclusion] on the issues presented in the civil lawsuit]; *Rusheen v. Drews* (2002) 99 Cal.App.4th 279, 284 [because a felony guilty plea is admissible as a party admission in a subsequent civil action arising out of the same offense, so too is a felony nolo plea; the plea in whatever form is not conclusive evidence, however, relying on *Teitelbaum*]; *20th Century Ins. Co. v. Schurtz* (2001) 92 Cal.App.4th 1188, 1193, 1196, fn. 3 ["we summarily reject 20th Century's contention that we ought to ignore *Teitelbaum's* limitation on the collateral estoppel effect of conviction based on a guilty or nolo contendere plea"]; *People v. Pease* (1988) 201 Cal.App.3d 29, 30, 32-34 [a trial court in a civil case may not give collateral estoppel effect to a criminal conviction involving the same issues of the conviction resulting from a guilty plea]; *Allstate Ins. Co. v. Overton* (1984) 160 Cal.App.3d 843, 848, fn. 3 [while a criminal judgment arising from a guilty plea does not qualify for use as collateral estoppel, the parties here stipulated defendant has been convicted after a trial]; *People v. Camp* (1970) 10 Cal.App.3d 651, 653 [same]; see most recently *People v. Mares* (2024) 99 Cal.App.5th 1158, 1173 [issue preclusion does not apply after entry of a guilty plea].)

In light of this authority, plaintiff's summary of *Teitelbaum* is erroneous, and defendant's concession as to the preclusive effect of a guilty plea in a subsequent civil action is inappropriate. In fact, it appears (again, in light of this authority) that there is no need for the court to approach the problem on an element-by-element basis. Further, plaintiff's citations to *Bowen v. Ryan* and *Mattson, supra,* are perplexing. *Bowen* had nothing to do with the doctrine of issue preclusion; it involved a reversal because the trial court prejudicially erred in admitting evidence of unrelated incidents pursuant to Evidence Code section 1101, subdivision (b), based on plaintiff's suit against defendant dentist for assault, battery, and professional negligence, because the prior incident evidence did not constitute common design or show intent pursuant to standards enunciated in *People v. Ewoldt* (1994) 7 Cal.4th 380, and was in any event inadmissible pursuant to Evidence Code section 352. And while *Mattson* did involve the appellate court's examination and application of the issue preclusion doctrine, it was done in the context of an earlier federal civil rights action, following a state court action based on an illegal

arrest by police officers, not a guilty plea or a criminal trial. Both *Bowen* and *Mattson* are therefore inapposite. Not to belabor the point, but the parties have overlooked or simply ignored a crucial line of authority seemingly dispositive of the question they ask the court to address. At a minimum, the parties will have to confront this authority in any future endeavor.

Additionally, if plaintiff wishes to proceed with issue preclusion as a sword and/or defendant wishes to utilize issue preclusion as a shield (after taking into account the authority detailed above), the parties should think carefully about how the matter should come before the court in the future. In the court's view, it seems appropriate to file a motion to bifurcate, asking the court to bifurcate liability from damages; if the motion is granted, it then seems appropriate to determine any preclusive impact of defendant's guilty plea/admission in the present negligence calculus, if any, via motions in limine. It should be remembered that a decision on the issue of liability against defendant, if any, would not result in a judgment until the issues of damages were resolved by the trier of fact. (*Paramount Petroleum Corp, supra*, 227 Cal.App.4th at p. 243.)

Again, these observations are offered to give direction to the parties for any future efforts concerning the doctrine of issue preclusion. The parties should come prepared to discuss these issues at the hearing.

The parties are directed to appear in person or by Zoom at the scheduled hearing.